Agenda Item 4
June 28, 2011
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CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK (I-BANK)

BOND AMENDMENT STAFF REPORT

ISSUE: In anticipation of proposed substitutions of letters of credit and credit providers of the California Infrastructure and Economic Development Bank Variable Rate Demand Revenue Bonds (California Academy of Sciences, San Francisco, California) Series 2008A, Series 2008B, Series 2008C, Series 2008D, Series 2008E and Series 2008F (2008 Bonds) issued on July 29, 2008, the California Academy of Sciences (Academy or Borrower) requests amendments to certain documents relating to the 2008 Bonds. The amendments will clarify certain provisions of the existing indenture and loan agreement, add a new interest rate mode permitting the 2008 Bonds to bear interest at a rate indexed to a LIBOR (London Interbank Offered Rate) rate (Index Rate), and permit the 2008 Bonds to be held by certain purchasers (which must be qualified institutional buyers) without the support of a letter of credit.

BACKGROUND INFORMATION: The Academy is a non-profit public benefit corporation founded in 1853, with the mission to explore, explain and protect the natural world using the resources of the natural history museum, aquarium and planetarium which are now in the new 400,000 square foot facility in Golden Gate Park. This new facility also houses a four story rainforest and is home to the Academy's staff of over 50 world class scientists and professional educators and supported by more than 100 research and field associates and over 300 fellows. The Academy hosts 11 fields of research and its research collections include more than 26 million specimens. Through original research in systematic biology – the study of the diversity of living things, their relationships to each other and their classification – and a broad array of science education activities, the Academy has informed the understanding of both the scientific community and the general public.

On March 13, 2003, the I-Bank issued Revenue Bonds (2003 Bonds) in the amount of $65,000,000 secured by a AAA-rated bond insurance policy issued by MBIA Insurance Corporation to finance a portion of the pre-development costs associated with the Academy's renovation including (1) capital costs incurred for environmental analysis, planning, designing, site remediation and obtaining the necessary governmental approvals for proposed improvements to its buildings at 55 Concourse Drive in Golden Gate Park in San Francisco; (2) acquisition and installation of equipment, furnishings, exhibitions and similar costs in connection with temporary facilities located at 875 Howard Street, San Francisco, including moving and storage expenses; (3) capitalized interest; (4) working capital and (5) costs of issuance.

On February 24, 2005, the I-Bank issued Revenue Bonds, Series 2005A and Series 2005B (together, the 2005 Bonds) totaling $115 million secured by AAA-rated bond insurance issued by MBIA Insurance Corporation in order to finance (1) the demolition, renovation, construction, replacement and equipping of the Academy's museum, research and educational facilities located at 55 Concourse Drive in San Francisco's

Golden Gate Park, including design, architectural and engineering expenses; (2) relocation costs associated with the Academy's current temporary facilities on Howard Street; (3) working capital of the Academy; (4) capitalized interest on the bonds; and (5) costs of issuance of the bonds.

The I-Bank Board approved Resolution 07-31 on November 27, 2007, authorizing the issuance of $275,000,000 in bonds and Resolution 07-36 on December 20, 2007 authorizing $300,000,000 in bonds. (Note: Neither of these Resolutions resulted in issuances.)

The I-Bank Board subsequently approved Resolution 08-15 on May 20, 2008, authorizing the issuance of up to $300,000,000 in bonds. On July 29, 2008, the I-Bank issued Variable Rate Demand Revenue Bonds, Series 2008A, 2008B, 2008C, 2008D, 2008E and 2008F (together, the 2008 Bonds) totaling $281,450,000. These bonds were secured by irrevocable direct pay letters of credit issued by the following: U.S. Bank, N.A. (Series 2008A), Wells Fargo Bank, N.A. (Series 2008B), Bank of Nova Scotia (Series 2008C), City National Bank (Series 2008D), The Northern Trust Company (Series 2008E) and Wells Fargo Bank, N.A. (Series 2008F). The 2008 Bonds refunded the outstanding I-Bank Revenue Bonds issued in 2003 and 2005 and provided funds to finance and refinance additional costs related to the project, costs of issuance and other related costs and expenses of the Academy. See Attachment A.

2008 Bonds

Series	Credit Provider	Proposed Purchaser	Amount
A	US Bank, N.A.	US Bank, N.A.	$ 93,360,000
B	Wells Fargo Bank, N.A.	Wells Fargo Bank, N.A.	60,010,000
C	Bank of Nova Scotia	Union Bank, N.A.	44,465,000
D	City National Bank	Wells Fargo Bank, N.A.	34,425,000
E	The Northern Trust Company	None	24,595,000
F	Wells Fargo Bank, N.A.	Wells Fargo Bank, N.A.	24,595,000
		Total	$ 281,450,000

NEED FOR AMENDMENTS/APPROVAL OF NEW TAX AGREEMENT:

Since certain letters of credit are scheduled to expire later this year, some of the credit providers would like to purchase directly one or more of the 2008 Bonds in a new Index Rate Mode (initially, a LIBOR-based mode) (Direct-Purchase Bonds). While a series of 2008 Bonds is in an Index Rate Mode, such series of 2008 Bonds will not be supported by a letter of credit and will not be rated. These Direct-Purchase Bonds may only be sold to Qualified Institutional Buyers (QIB) as defined by Rule 144A promulgated under the Securities Act of 1933 as amended, with resale limitations. It is anticipated that the 2008 Bonds (Series A, B, C, D and F) will be remarketed to Union Bank, N.A., U.S. Bank, National Association, and Wells Fargo Bank, N.A. (collectively, the Purchasers).

The Northern Trust Company will remain as a Letter of Credit Provider for Series E as shown above.

In order to facilitate the sale of the Direct-Purchase Bonds to the Purchasers, the Indenture and Loan Agreement must be amended to add the new Index Rate Mode and allow for the Direct-Purchase Bonds to be held by the Purchasers without the support of a letter of credit.

In conjunction with this anticipated remarketing, the Academy has requested an amendment of the Indenture and Loan Agreement for the 2008 Bonds to add a new interest rate calculation method, indexed to a LIBOR rate, and to permit bonds bearing interest at this new Index Rate to be unrated, to the extent they are held by QIBs within the meaning of Section 144(A) promulgated under the Securities Act of 1933, as amended. Amendments to the original Indenture and Loan Agreement will also clarify certain provisions in anticipation of the planned remarketing to the Purchasers and establish an initial Index Rate period during which the 2008 Bonds are to be held by the Purchasers. The amendments to the Indenture do not require bondholder consent, as they will become effective only after thirty day's notice of mandatory tender to bondholders who will then tender their bonds prior to the date the amendments become effective. However, these amendments do result in a material change to the terms of the 2008 Bonds as approved by the I-Bank Board, and as such the authority to enter into these amended documents does not fit within the scope of the Executive Director's existing delegated authority established by Resolution 08-35.

It is the plan of the Academy, once the amendments to the indenture and loan agreement are effective, to remarket a portion of the 2008 Bonds for purchase. Tax counsel has advised I-Bank staff that the amendments to the documents and the remarketing will constitute a "reissuance" of the 2008 Bonds under federal tax law, and has advised that a new tax agreement and certificate must be entered into between the I-Bank and the Academy. The approval of this new tax agreement does not fit within the scope of the Executive Director's existing delegated authority established by Resolution 08-05.

FINANCING STRUCTURE: In accordance with the I-Bank's adopted Policies and Procedures for Conduit Revenue Bond Financing for Economic Development Facilities (Policies), the I-Bank's general policy is to issue bonds bearing certain minimum ratings. The Policies provide that the Board may waive the requirement for a credit rating where bonds are sold using a private placement or limited underwriting offering structure subject to the following additional conditions:

1. **Sophisticated Investor**. The investor(s) will be required to sign a "sophisticated investor" letter acceptable to the Infrastructure Bank. Each investor must be a qualified institutional buyer within the meaning of S.E.C. Rule 144A, or an equivalent sophisticated investor with a demonstrated understanding

of the risks associated with the municipal market, acceptable to the Infrastructure Bank.

2. **Resale Limitations**. Depending on the circumstances of the proposed sale, the Infrastructure Bank may require conditions for the resale of the 2008 Bonds after initial issuance.

3. **Minimum Denomination**. The Infrastructure Bank will require a minimum bond denomination of at least $100,000 on private placements or limited underwritten offerings; denominations may be higher depending on the circumstances of the sale.

The proposed amendments would permit the 2008 Bonds to be unrated during an Index Rate period, as long as the 2008 Bonds are held by a QIB, and would restrict the remarketing or transfer of such unrated Index Rate bonds except to QIBs. The proposed amendment would also require that bonds bearing an Index Interest Rate will be held in minimum denominations of $1,000,000 and any integral multiple of $5,000 in excess thereof.

Each of the Purchasers has represented to I-Bank staff that it is a QIB. Pursuant to the terms of the proposed amended indenture, each of the Purchasers will be required to formally certify to its status as a QIB prior to purchase upon remarketing. Specifically, each of the Purchasers will be required to certify, among other things, that: (i) it is a QIB; (ii) it has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the 2008 Bonds and that it is able to bear the economic risks of such investment; and, (iii) unless the 2008 Bonds are subsequently rated by a rating agency at a rating which meets the I-Bank's minimum rating standards, it will not transfer its interest in the 2008 Bonds, except to another QIB signing a sophisticated investor letter, and only in denominations of $1,000,000 or greater. Each QIB purchaser will also be required to certify that it understands there is no liability on the part of the I-Bank or the State to make any payment on the 2008 Bonds other than the I-Bank's limited obligation to make payments from revenues received from the Borrower.

RECOMMENDATION: Staff recommends approval of Resolution 11-12 authorizing an amended and restated Indenture and an amended and restated Loan Agreement, to, among other things, add an Index Rate method of setting interest on the California Infrastructure and Economic Development Bank Variable Rate Demand Revenue Bonds (California Academy of Sciences), Series 2008, and to permit the 2008 Bonds to be held unrated by a Qualified Institutional Buyer during an Index Rate Period. Resolution 11-12 would also authorize a tax agreement in relation to the anticipated remarketing of the 2008 Bonds.

Attachment A